



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP - 6 2018

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable John Shimkus
Chairman
Subcommittee on Environment
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Chairman Shimkus:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's Questions for the Record following the May 16, 2018 hearing entitled "Legislation Addressing New Source Review Permitting Reform."

If you have further questions, please contact me or your staff may contact Karen Thundiyil in the EPA's Office of Congressional and Intergovernmental Relations at thundiyil.karen@epa.gov or (202) 564-1142.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Lyons", is written over the typed name of the Associate Administrator.

Troy M. Lyons
Associate Administrator

Enclosure

Attachment— Responses to Additional Questions for the Record

The Honorable John Shimkus

1. Do you think this discussion draft under consideration today reforms the NSR program while still ensuring air regulators have the tools they need to protect air quality?

Response: I believe the reforms contained in the discussion draft would reduce the likelihood that the program will be a barrier to the implementation of beneficial projects, such as energy efficiency projects. The reforms would not affect any of the numerous other air quality management programs and tools that air regulators will continue to have at their disposal to ensure air quality protection.

2. An important component of the NSR program focuses on how an owner determines if a potential project will cause an emissions increase, thereby requiring an owner to obtain an NSR preconstruction permit.

- a. Why is the NSR program's current annual emission projection approach problematic for determining whether an emissions increase will occur?

Response: As noted above, the current annual emissions projections approach can be a disincentive to certain projects that improve facility operations and result in environmental benefits – most notably, energy efficiency projects. The current approach also causes confusion because it is inconsistent with the emissions test used in the NSPS program. The discussion draft would help address both problems.

- b. Are their scenarios where the EPA's annual emission projection approach will predict on paper that a project will cause an emissions increase when in reality the project will not actually cause an emissions increase

Response: Because the current annual emissions projection is a projection, it is possible that the actual emissions resulting from the implementation of a project would be less than initially anticipated. This is particularly the case for the current "actual-to-projected-actual" applicability test which relies on the source's pre-project estimates of future actual operating conditions and emissions.

3. Some opponents of NSR reform believe that the NSR program is a critical program to force existing sources to adopt new pollution control technologies.

- a. Besides the NSR program, what other Federal and State programs exist that can require or incentivize a facility to adopt new pollution control technologies?

Response: The discussion draft under consideration does not change the control technology component of the NSR program. As such, NSR will continue to be an emissions control program that requires sources to adopt state of the art pollution control technologies as appropriate and necessary. In addition to NSR, there are many other Federal and State programs authorized by the Clean Air Act that require or incentivize air pollution controls. Examples include:

- State plans developed pursuant to CAA § 110, including minor NSR programs

- New Source Performance Standards developed pursuant to CAA § 111
 - National Emissions Standards for Hazardous Air Pollutants pursuant to CAA § 112
 - The Acid Rain Program established under title IV of the CAA
 - Interstate transfer programs established under the ‘good neighbor’ provisions of CAA § 110 (e.g., the Cross-State Air Pollution Rule)
 - The Regional Haze Program under CAA § 169
4. The current NSR program has been characterized as “self-implementing,” meaning that companies are able to determine the applicability of NSR requirements on their own and do not require preapproval from the EPA before carrying out projects at existing facilities that do not trigger NSR. Is there anything in the discussion draft that would undermine the self-implementing nature of the NSR program?

Response: As currently drafted, the discussion draft reforms are not expected to affect the self-implementing nature of the NSR program.

The Honorable Frank Pallone, Jr.

1. Mr. Wehrum, at the hearing you committed to sharing the Office of Air and Radiation’s comments on the recent Strengthening Transparency in Regulatory Science proposed rule. Please provide the Committee with those comments.

Response: During the intra-agency deliberative process to develop the proposal, the Office of Air and Radiation’s immediate office worked with senior leadership in its respective programs to solicit verbal feedback regarding the potential implications of the concepts in the proposal on program priorities. This feedback was provided to the proposal development team prior to interagency review.

The Honorable Debbie Dingell

On January 25th, EPA issued guidance that reversed the long standing “once in, always in” policy for major sources of hazardous air pollutants. In response, I sent EPA a letter in April, along with 86 colleagues, calling for the decision to be reversed.

In April, Administrator Pruitt told this committee that EPA conducted a review to determine which sources, and how many, would be covered by this policy change, and the magnitude of hazardous air pollution that could increase as a result.

1. Mr. Wehrum, did this review take place? If yes, when was it conducted, and is it publicly available? Please provide a copy of EPA’s analysis.

Response: The January 25, 2018 Wehrum guidance memo builds upon a 2007 proposed rule that addressed the same issue. In that proposal, EPA asserted that, “The environmental, economic, and energy impacts of the proposed amendments cannot be quantified without knowing which sources will avail themselves of the regulatory provisions proposed in this

rule and what methods of HAP emission reductions will be used. It is unknown how many sources would choose to take permit conditions that would limit their PTE to below major source levels.

Within this group it also is not known how many sources may increase their emissions from the major source MACT level (assuming the level is below the major source thresholds). Similarly, we cannot identify or quantify the universe of sources that would decrease their HAP emissions to below the level required by the NESHAP to achieve area source status.” (72 FR 77, January 3, 2007). In the 2007 proposed rule, EPA concluded that, “we believe it is unlikely that a source that currently emits at a level below the major source thresholds as the result of compliance with a MACT standard would increase its emissions in response to this rule. However, even if such increases occur, the increases will likely be offset by emission reductions at other sources that should occur as the result of this proposal. Specifically, this proposal provides an incentive for those sources that are currently emitting above major source thresholds and complying with MACT, to reduce their HAP emissions to below the major source thresholds.” (72 FR 73-74, January 3, 2007).

In a recent report released by the Union of Concerned Scientists, 7 industrial facilities in my district alone could release an additional 155 tons of hazardous air pollutants per year with the rescission of this policy. It is still not clear whether EPA has looked at the full ramifications and potential health effects of this decision. At the April 26th hearing, Administrator Pruitt did not know whether EPA had analyzed the potential health effects of this policy, and pledged to “assess and provide” more information. I am still waiting for a response.

2. A. Mr. Wehrum, yes or no, before releasing the January 25th guidance did EPA conduct any scientific analysis of the potential human health effects of this decision?

Response: As explained above, EPA looked at the implications of the policy in the 2007 proposal and found it was “unlikely that a source that currently emits at a level below the major source thresholds as the result of compliance with a MACT standard would increase its emissions in response to this proposal.”

EPA is aware of the Union of Concerned Scientists report referenced in your question. As we noted in the 2018 Memo, EPA anticipates that it will be publishing a Federal Register notice to take comment on adding regulatory text that will reflect EPA’s plain language reading of the statute. Further, as we proceed through the rulemaking process, we will prepare appropriate economic and other analyses with respect to the action and provide details about the length of the comment period and location of any public hearing.

3. If your answer to 2a is yes, when was the analysis conducted, and is it publicly available? Please provide a copy of this analysis to the Committee.

Response: See above.

4. If your answer to 2a is no, has EPA conducted such an analysis since releasing the January 25th guidance?

Response: See above.



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Ranking Member
Subcommittee on Environment
Committee on Energy and Commerce
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Washington, D.C. 20515

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2. An important component of the NSR program focuses on how an owner determines if a potential project will cause an emissions increase, thereby requiring an owner to obtain an NSR preconstruction permit.

- a. Why is the NSR program's current annual emission projection approach problematic for determining whether an emissions increase will occur?

Response: As noted above, the current annual emissions projections approach can be a disincentive to certain projects that improve facility operations and result in environmental benefits – most notably, energy efficiency projects. The current approach also causes confusion because it is inconsistent with the emissions test used in the NSPS program. The discussion draft would help address both problems.

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1. Mr. Wehrum, did this review take place? If yes, when was it conducted, and is it publicly available? Please provide a copy of EPA’s analysis.

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3. If your answer to 2a is yes, when was the analysis conducted, and is it publicly available? Please provide a copy of this analysis to the Committee.

Response: See above.

4. If your answer to 2a is no, has EPA conducted such an analysis since releasing the January 25th guidance?

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Response: See above.

4. If your answer to 2a is no, has EPA conducted such an analysis since releasing the January 25th guidance?

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